IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 385 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIPINKUMAR J MEHTA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 385 of 1988

MRS KETTY A MEHTA for Petitioner No. 1-2

MS.FALGUNI PATEL, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1

MR SHANTILAL K SHAH for Respondent No. 2

MR SUNIL K SHAH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 05/02/2004

ORAL JUDGEMENT

The present petition is filed for the redressal of the grievance of non grant of option mainly complaining that the employees who were recruited subsequent to the amendment of the Gujarat Panchayat Service (Classification & Recruitment) Rules, 1967 by the Gujarat Panchayat Service (Classification & Recruitment) (2nd Amendment) Rules, 1977, were not given an opportunity to exercise an option. It is submitted that by further amendment of Gujarat Panchayat Service (Classification & Recruitment) Rules, 1967 in the year 1978 by the Gujarat Panchayat Service (Classification & Recruitment) (8th Amendment) Rules, 1978, under the Eighth (Amendment) Rules, subrules 4, 5, 6 were sought to be added in Rule 3A after subrule (3). Subrule (4) reads thus:

"(4) For the purpose of allotment to the common clerical cadre and the common accounts cadre, the panchayat servants specified in the Table below shall be given notice for exercising option for allotment either in the common clerical cadre or in the common accounts cadre. Such option shall be exercised within a period of three months from the date on which the notice is served. Such notice shall be served on each such servant individually. If the number of servants who opt for a particular cadre exceeds the number of posts available in that cadre, the Committee shall finalise the allotment of such servants taking into consideration the following matters, namely,

(a) length of service rendered by the servant and the experience of work he has gained during the service;

(b) educational qualifications of the servant;

(c) suitability of the servant for allotment in the particular cadre which shall be determined by holding oral test.

TABLE

(i) Senior Clerks mentioned in Clerical Group II in Part I of Schedule IV-A to the said rules.

(ii) Clerks mentioned in Clerical Group III in Part I of Schedule IV-A to the said rules.

(iii) Senior Clerks mentioned in Accounts Group III in Part II of Schedule IV-A to the said rules.

(iv) Clerks mentioned in Accounts Group IV-A in Part II of Schedule IV-A to the said rules."

Thus, by subrule (4) it was provided that the existing employees also be given an opportunity to exercise their option to opt either for 'common clerical cadre' or 'common accounts cadre'.

1.1 Mr.Shah, the learned advocate appearing for the District Development Officer, District Panchayat, Mehsana placed on record a copy of the order dated 4th July/ August 1994 issued by the Deputy District Development Officer, District Panchayat, Mehsana whereby it was decided that an opportunity be given to the persons who were appointed as Junior Clerk after 13.05.1977 to exercise their options. Mr.Shah, the learned advocate placed on record a copy of the order passed by this Court (Coram: S.K. Keshote, J.) dated 16.07.1997 in Special Civil Application No.2491 of 1985 which was disposed of after taking into consideration the contents of the aforesaid order of the Deputy District Development Officer.

2. Ms.K.A. Mehta, the learned advocate submitted that to her information the said order dated 4th July/ August 1994 was not implemented by the authorities in view of a petition being Special Civil Application No.10432 of 1994 filed before this Court. The papers of the said Special Civil Application No.10432 of 1994 were called for from the office. The said matter is disposed of by this Court (Coram: M.S. Parikh, J.) by an order dated 25.01.1996. But then the order dated 4th July/ August 1994 is not quashed and set aside by this Court while disposing of the said petition. In that view of the matter the grievance ventilated in the present petition does not survive because in view of the order dated 4th July/ August 1994, it will be open for the petitioners to pursue the matter of 'granting the option' with the District Development Officer.

3. The petition is accordingly disposed of. Rule is discharged. Interim relief is vacated. No order as to costs.

(Ravi R. Tripathi, J.)

karim